

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

MEADWESTVACO CORPORATION,
ESCANABA PAPER COMPANY

and

PAPER, ALLIED INDUSTRIAL, CHEMICAL
AND ENERGY WORKERS INTERNATIONAL
UNION, LOCAL 5-021

FMCS case No. 01-04901

Appearances:

Thompson Hine LLP, Attorneys at Law, by Mr. Richard J. Brown, 2000 Courthouse Plaza, N.E., 10 West Second Street, Dayton, Ohio 45402, appearing on behalf of the Company.

Mr. Richard LaCosse, International Representative, PACE International Union, Region X, 3001 3rd Avenue, South, Escanaba, Michigan 49829, appearing on behalf of the Union.

ARBITRATION AWARD

Pursuant to the provisions of the collective bargaining agreement between the parties, MeadWestvaco Corporation, Escanaba Paper Company, hereinafter referred to as the Company, and Paper, Allied Industrial, Chemical and Energy Workers International Union, Local 5-021, hereinafter referred to as the Union, the undersigned was selected to serve as arbitrator of FMCS Case no. 01-04901. A hearing was held on March 13, 2002, in Escanaba, Michigan, at which time the parties presented such testimony, exhibits and other evidence as was relevant to the dispute. The parties filed briefs by April 19, 2002, at which time the record was closed.

Now, having considered the evidence, the arguments of the parties, the contract language and the record as a whole, the undersigned makes the following Award.

STIPULATED ISSUE:

Did the Company violate the terms of the collective bargaining agreement when it took bargaining unit work away from PACE represented employees and assigned this work to non-unit employees?

If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 6. MANAGEMENT

The management of the Company and the direction of the working force, including the right to plan, direct and control plant operations; to determine when work is to be performed and to schedule and assign such work to employees to determine, alter, revise, change or eliminate any or all means, methods, processes, materials and schedules of production; to determine the number and size of crews; to determine the location of its plant; to establish production and work standards; to control the nature and specifications of all raw materials, semi-manufactured and finished goods, whether or not they may be incorporated into the products manufactured; and the right to hire employees are rights solely of the Company and are not abridged by any other provisions of this Agreement. All other rights not specifically nullified by this Agreement are retained by the Company.

. . .

ARTICLE 20. SUPERVISORY WORK RESTRICTIONS

Supervisors, foremen and other non-unit company employees shall not perform any work normally assigned to hourly rated employees, except for training purposes and in case of emergencies or to protect the health and welfare of employees.

. . .

ARTICLE 24. GRIEVANCE AND ARBITRATION PROCEDURE

. . .

The arbitrator does not have the authority to change, modify, add to or subtract from, or alter this agreement in any way. The cost, if any, of this impartial arbitrator shall be paid equally by the parties to this agreement.

FACTS:

The Company, MeadWestvaco Corporation, Escanaba Paper Company, operates a large paper mill in Escanaba, Michigan where it manufactures paper for the publishing and printing businesses. Approximately nine hundred of the employees at the Company are represented by the Union herein, Paper, Allied Industrial, Chemical and Energy Workers International Union, (PACE). Among the employees represented by PACE are the eighteen employees in the Storeroom. The remaining non-supervisory employees are represented by the Teamsters and International Brotherhood of Electrical Workers.

The event that eventually gave rise to the instant grievance occurred in mid-2000 when the Company made the decision to implement a corporate-wide data network and retrieval system, commonly referred to as SAP. Its purpose was to eliminate the different systems used by each division so that the entire Company with its various locations was on one and the same system, with no modifications for individual locations. Those working on the system have “roles” with tasks and functions to perform. For security reasons, a person must perform either all or none of the tasks; in other words the system requires that an employee either be given the

whole role or nothing. This allows a minimum number of employees with access to the system and information contained therein. Said employees access the system with a password and I.D. number.

After a period of study and implementation, the new system became effective August 2000. Two new positions were created: Repair Coordinator and Local Material Master Data Coordinator. The two positions are in the purchasing department because they are viewed as “buyer” positions and not “receiving” positions.

Prior to SAP, the Company utilized the MAPS system which involved the Storeroom more than it does now. The Storeroom was the focal point for most maintenance type items. Items would be purchased and stocked in the Storeroom to be disbursed as needed.

Upon implementation of SAP, the Company moved away from maintaining a large inventory. It did this by only keeping an inventory and shelving materials in the Storeroom that were critical to the operation and were needed immediately. When needed these Storeroom items are priced and ordered. All other items are purchased by what’s called the “E Procurement” process or “direct buy”. Corporate contracts are set up for said material and the system itself cuts an order when the material reaches below the established minimum. A buyer is not involved, the system automatically cuts an order to the supplier.

Also, under SAP a concerted effort was made to repair, and avoid purchasing, as many items as possible.

The Repair Coordinator position was filled by Lisa Annear who was the Senior Receiving Clerk in the Storeroom. Her primary job responsibility is to identify repairable items and purchase repair services. During her 45-50 hour workweek she spends about 1-2 hours performing work previously performed by Storeroom personnel. Some of that time is spent

placing work orders for repairs by the machine shop. Previously, a request was made by the maintenance department to the Storeroom for a repair, the lead Expeditor would determine if it was a repair item and, if so, would create a purchase order and send it to the machine shop where the work was performed and the part sent to the Storeroom. The SAP system no longer allows this procedure (i.e. purchase order from Storeroom to in-house-machine shop operation) for audit reasons. Now, the maintenance department requests repair work, she creates a work order and the work is performed by the machine shop and returned to maintenance. The Storeroom is no longer involved. Of the previous Storeroom duties now performed by the Repair Coordinator, this duty is the one most often performed. Other Storeroom duties performed are: (1) Review and release blocked invoices which entails (a) request material changes to repairable and (b) request Material Master modifications and adds and submit on-line and (2) Create purchasing information records (PIR's) which requires maintaining service lists. (See Jt. 3) Annear works 45-50 hours per week spending 1-2 hours performing previous Storeroom duties.

The Local Material Master Data Coordinator (LMMDC), Nancy Lantagne, is the person who has access to and responsibility for maintaining the Corporate-wide SAP catalogue for the Escanaba mill. Under MAPS almost everything catalogued was Storeroom items, but under SAP

all material that is purchased or sold is catalogued, not just Storeroom items. The non-Storeroom items are direct buy items. Under MAPS, there were few direct buy items and Storeroom personnel had no involvement with those items.¹ Under SAP, direct buy is preferred to reduce inventory and, therefore, there is much more direct buy activity than before.

The process under MAPS was as follows: when maintenance needed a new item someone in maintenance would fill out a form (Co. Ex. 1) and carry it through to the Storeroom manager; he would approve it, catalog it and put it into Storeroom inventory, from there it would go to purchasing where the item would be purchased; then the paperwork with the P.O. number would go to the Storeroom expeditor who would physically receive the item and issue a catalog number and catalog the item.

Now, under SAP, the process is performed on-line. When requestors in maintenance want to add an item to the catalog or Storeroom inventory, they go on-line, instead of filing a form, and fill out information on the form (Co. Ex. 1, p. 2) and the item is catalogued before it is even ordered. Once completed the form is submitted, by computer, to the LMMDC who reviews it and submits it to corporate in Dayton and they assign a catalog number and send it back to the LMMDC who sets the item up so it can be ordered and get it in the Storeroom if it is a Storeroom inventory item. If not a Storeroom item, it is set-up for direct buy. She spends about

1 The requestor would place a requisition, order it, and it would go to the buyer who would purchase it.

two hours performing said duties previously performed by Storeroom personnel. Lantagne performs other Storeroom duties² as well thus totaling approximately 4.5 hours of her 40 to 50 hour week. When she was off for a period of eight weeks for medical reasons, two purchasing department employees filled in for her. They signed on with her password and I.D. Both employees are in the clerical unit represented by the Teamsters.

POSITIONS OF THE PARTIES:

Union Position:

The Union feels the Company violated the labor agreement when it took work from the hourly-represented employees and assigned it to non-unit personnel. It argues that the agreement is clear. The Union argues that Article 20 does not say “may not” perform, it says “shall not” perform. There is no room for ambiguity in this language.

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- 2 Fill out on-line description change request* (now, anyone in the mill can do this, as well as Storeroom personnel)

Notification to Corp. of description changes*

...

Prior to SAP, once the information from step 2 was collected, purchasing would pass the information to the Storeroom so they could update the local description (this is now the PIR); the Storeroom would then send the information to Corp. so they could update the catalog.*

Modifications to descriptions on Storeroom items – catalog, PIR’s and Bill of Materials (BOM’s)*

Requests for SAP material numbers for new stores inventory items*

Change existing storeroom items to duplicate, obsolete or direct buys*

Location Changes*

Min/max, reorder quantities, rounding factors*

Change to repairable*

The Union in addressing the Company's de minimus argument, again contends that the language regarding supervisors doing hourly work is clear. It says non-unit company employees shall not perform any work normally assigned to hourly rated employees. It is the Union's position that this language was clearly intended to address de minimus work. If the parties to the labor agreement had intended to allow for de minimus work they would have stated so according to the Union. It appears that the Company is trying to rewrite the labor agreement in this case.

With respect to the Company's security argument, the Union notes that management in the early stages of the grievance procedure raised the security issue, but then argued that the hourly personnel were capable and honest; there were no security concerns with any of the hourly employees. Yet, the Union argues, the issue of security was again used as a rational at the arbitration proceedings.

The Union submits that security is certainly not an issue when we examine what happened in the absence of Ms. Nancy Lantagne who holds the newly created non-unit position of "Local Material Master Data Coordinator". Ms. Lantagne testified she was off work for approximately eight weeks for medical reasons. This was after the grievance was written. During her absence the Company had an hourly clerical person from the Teamsters bargaining unit do her job. Obviously, it is argued, there was no concern for security then. In fact, Ms. Lantagne even gave this other person her password so she could get into the system.

The Company, the Union notes, also argued that Management Rights gives them the right to take this work away from the bargaining unit and give it to non-unit personnel. But, the Union claims, it has been well established in many arbitration awards that management rights do not negate clear and unambiguous contract language.

Management, it is argued, also admitted that this transfer of duties from unit-employees

to non-unit employees was a decision made by corporate and that local management was directed to implement it. It's obvious that corporate didn't bother to look at the labor agreement that exists between the parties or they chose to ignore it. However, the Union avers, there can be no circumventing the contract language. Corporate does not have the right to ignore it and the Union feels the Company must be made to live up to the agreement that exists between the parties.

Finally, the Union points out the powers of the Arbitrator are stated in Article 24 of the agreement and it specifically states that "The arbitrator does not have the authority to change, modify, add to or subtract from, or alter this agreement in any way."

Based on the above, the Union requests that the grievance be sustained and the Company be directed to reassign the work in question to the hourly Storeroom employees who are represented by PAC Local 7-0021.

Company's Position:

It is the Company's position that the Union's assertion of a claimed violation of Article 20 is trumped by the express language in Article 6 of the labor agreement which specifically and unqualifiedly states that the Company has the sole right to assign work to employees and this right cannot be "abridged" by any other provisions of the labor agreement. In other words, the Company's right cannot be diminished or reduced in scope by any other provisions of the labor agreement. Moreover, Article 6 states that because the Company exercises its exclusive rights in

one way does not preclude it from exercising them in another way at a later time. Finally, echoing the assertion of the Union, the Company also would remind the Arbitrator that he is without authority to “change, modify, add to or subtract from, or alter this agreement in any way.”

The Company argues that using the simple approach urged by the Union, the Company’s argument for denying the grievance based strictly on contract language is overwhelmingly compelling. For this reason, the Company would submit to the Arbitrator that a strict constructionist contract analysis results in the denial of the Union’s grievance.

Even so, the Company called several witnesses that provided the Arbitrator with the background and rationale for the changes that occurred with the introduction of the SAP system. In analyzing the Union’s grievance against this background, the Company submits that there are other arbitral tenets that likewise favor denial of the Union’s grievance.

The Company finds important that the Union represents the production and maintenance employees at the Escanaba Mill, and not the clerical employees. Thus, the duties at issue in this case are not the meat and potatoes of the Union’s representation – such staple duties being those tasks related to mill production operations and the maintenance of mill production equipment and facilities. This, it is claimed, is important because the basic purpose of a contract provision like Article 20 is to protect the Union and the bargaining unit employees against the unwarranted transfer of their regularly assigned job duties. Clearly, to the extent that these clerical duties amount to a transfer of work previously performed by bargaining unit employees, this transfer did not involve work of a character or kind that is fundamental to the bargaining unit or to the prohibitions focused upon in Article 20. In fact, it is argued, these disputed clerical tasks are not even aligned with the work “normally performed” in the Storeroom except for maybe one or two

keypad strokes. The Storeroom exists at the Escanaba Mill to receive, store and dispense maintenance parts and other items. It does not function as the purchasing department or the order entry department for the Escanaba Mill. A substantial amount of the information involved in these disputed tasks is information related to purchasing items, not to inventorying them. Stated simply, the Company argues, the tasks involved are clerical in nature and not directly related to the Storeroom, and these tasks do not involve work “normally assigned” to the bargaining unit. *White-New Idea Farm Equipment Co.*, 101 LA 461 (High, 1993).

Also, the Company argues, one should not lose sight of the fact that these are not significant or substantial duties in relation to the duties normally performed within the job classifications assigned to the Storeroom. By not calling any witnesses, the Union artfully avoided any attention to the fact that there was no single Storeroom bargaining unit classification that spent more than *de minimus* time performing these clerical tasks. In truth, these functions were spread among so many bargaining unit employees in the Storeroom that the Union could not find one classification to focus upon in presenting its case.³ This conclusion is made most obvious by the fact that all of the Storeroom classifications have remained viable jobs some 18 months following the introduction of SAP. *Sprint/Centel-Florida*, 105 LA 233 (Odom, 1995).

At the hearing, the Company notes that the Union attempted, albeit unsuccessfully, to suggest that the “security” issue related to SAP existed because the Storeroom personnel are unionized. Nothing could be further from the truth. To the contrary, it is claimed, it is obvious that “security” within SAP focuses on the primary role or job responsibility of the particular

3 Ms. Lantagne and Ms. Annear testified that together they spent, at most, 6.5 hours a week performing these clerical tasks. Spread among 18 employees in the Storeroom, and using a 40-hour workweek, this represents less than 1% of the Storeroom hours for a week.

employee, and related secondary or clerical tasks then accompany that role. For example, under SAP, audit (business ethics) concerns require that “receiving” functions (Storeroom) be separated from “buyer” functions (purchasing). In this connection, managing SAP catalogue items – be they Storeroom items, direct buy items, repair items, or raw materials – are considered to be a part of the purchasing role. Thus, only employees having purchasing related roles are permitted access to modify the information base of the SAP catalogue. The fact that only a limited number of persons within the entire corporation can access the catalogue for certain functions is also a security issue within SAP, but this limitation applies regardless of the “purchasing versus receiving” segregation. As was pointed out earlier, one of the fundamental principles of SAP is to restrict the ability to change information in the system in order to protect the overall accuracy of the system. This is to protect the integrity of the information base. Thus, while the computerized clerical tasks performed under MAPS and SAP may be physically similar, it is apparent that the change in systems has substantially changed the character and method by which this type of work is performed. The net effect, the Company contends, is that this is not work that is an integral part of the Storeroom activities, nor is it of sufficient magnitude or similarity to previous tasks to warrant its inclusion within the bargaining unit.

Based on all of the above, and reasons set forth therein, the Company submits and cites a case in support thereof, that the grievance should be denied. However, should the Arbitrator find a violation of Article 20 that is not trumped by the provision of Article 4, the Company would urge that the duties are de minimus to the Storeroom classifications and no remedy should be ordered.

DISCUSSION:

The Company's initial position is that Article 6, Management, and the rights set forth therein, including the right to assign work, preempts Article 20 and therefore controls the disposition of this case. This is so, it argues, because Article 6 specifically states that the management rights listed cannot be "abridged by any other provisions of this Agreement".

In interpreting this proviso, the Arbitrator must construe the contract as a whole, and to give effect to all clauses and words.⁴ In this regard, to accept the Company's position would render meaningless Article 20 which restricts the Company's assignment of work to non-unit employees. A more reasonable reading of Article 6, and one which would give effect to both Article 6 and Article 20, is that the Company's right to assign work refers to work assigned to unit employees, and not that management has the right, irrespective of other terms of the contract, to assign unit work to employees outside the unit. Accordingly, the Arbitrator finds Article 20 relevant and applicable in the disposition of the instant grievance.

As stated earlier, it was the Company's implementation of the corporate-wide SAP system in August 2000, replacing the MAPS system, that led to the instant dispute over the assignment of job duties. What is abundantly clear from the record is that MeadWestvaco made the decision to change systems without regard to the various collective bargaining agreements it was party to with its unions. Corporate decided it wanted to convert to a company-wide system and left any impact issues regarding the collective bargaining agreements to be dealt with locally.

4 Elkouri and Elkouri, How Arbitration Works, (5th ed. 1997). See generally, Chapter 9, Standards for Interpreting Contract Language, pp. 492-497.

Among the impact items, was the change in job duty assignments under SAP. Regarding same, the parties agree that, indeed, certain duties previously performed by Storeroom personnel are now being performed by the two newly created positions of Repair Coordinator and Local Material Master Data Coordinator . (See Joint Exhibits 3 and 4)

It goes without saying that the Arbitrator in deciding whether the Company violated the collective bargaining agreement as alleged must do so within the context of the agreement itself. The Arbitrator, therefore, does not have the freedom to decide the issue on the basis of the rationale or merits of the SAP system and what's best in terms of the efficient operation of the Company.⁵ The Company's rationale based on security issues and the separation of buying and receiving functions for audit purposes make sense, but the Arbitrator's decision is dictated by the agreement and specifically Article 20.

Said Article is entitled "Supervisory Work Restrictions", is somewhat misleading because it seems to indicate that said provision and its prohibition only applies to supervisory employees. However, the language itself prohibits ". . .other non-unit Company employees. . . ." from performing ". . .any work normally assigned to hourly rated employees. . . ."⁶ (Emphasis added) Had the parties intended said provision to apply to supervisors only, there would have been no need to add "and other non-unit Company employees". Thus the work restriction applies to the Repair and LMMD Coordinators.

5 As both parties point out, Article 24, Grievance and Arbitration Procedure, specifically states, "The Arbitrator does not have the authority to change, modify, add to or subtract from, or alter this agreement in any way. . . ."

6 There are exceptions for training, emergencies and to protect the health and welfare of employees which do not apply here.

The Company argues that even if Article 20 applies, the disputed duties involved herein do not fall within the restrictions of said article because they are clerical in nature and not work normally performed in the Storeroom. It is argued that Storeroom exists to receive, store and dispense maintenance parts and other items. Further, it is argued, the Union represents production and maintenance employees and that is what Article 20 is intended to protect.

The Company's arguments are certainly reasonable, but the language of Article 20 is not restrictive enough to support such a position. Article 20 prohibits work "normally assigned" to hourly rate employees without distinguishing or qualifying the type of work. While the duties performed may not have been the core duties associated with the overall function of the Storeroom, it was, nevertheless, work that was essential to running the Storeroom operation. The language of Article 20 is not couched in terms of protecting production and maintenance type of work, but, rather, work "normally assigned".

Further, there is no question the work at issue was normally assigned to Storeroom personnel. It may be said work was not assigned to just one or two employees, but it was work always performed by Storeroom personnel and no one else.

Lastly, the amount of work performed by non-unit employees is not de minimus. In denying grievances, arbitrators sometimes apply the rule of de minimus, under which trifling or immaterial matters will not be taken into account.⁷ There is no hard and fast rule on what constitutes de minimus; each case must be decided on its own facts. Here, the work involved was not a temporary or sporadic performance of unit work, but was a permanent reassignment.

7 For a thorough discussion of the rule see Elkouri and Elkouri, How Arbitration Works, at pp. 588 & 589 (5th ed. 1997).

Further, the unit employees were available and ready and capable of continuing to perform the disputed duties previously performed. Under the circumstances, reassigning 5.5 to 6.5 hours of work per week, permanently, cannot be considered de minimus.⁸

SUMMARY AND CONCLUSION

Article 6 does not preempt Article 20. To find so, would render Article 20 meaningless. A finding that the assignment of work to unit employees is a management right, but that the assignment of unit work to non-unit employees is controlled by Article 20, gives meaning to both Article 6 and Article 20.

In deciding the merits of the issue presented, the Arbitrator is confined to the terms of the collective bargaining agreement. Management's rights as outlined in Article 6 are limited only by specific provisions of the contract and one such provision is Article 20 that restricts the reassignment of work normally assigned to hourly rate employees to non-unit employees. The work in dispute is found to be work normally assigned to Storeroom personnel and assignment of said work to the Repair and LMMD Coordinators constituted a violation of Article 20. Further, said violation is not de minimus and, therefore, a remedy cannot be denied on said basis.

Because the Arbitrator is limited to the interpretation and application of the agreement, the Arbitrator is not free to relieve the Company of its contractual obligation, even if its decision

8 In the case cited by the Employer, Sysco Food Services, 106 LA 524 (Gentile, 1996), the Arbitrator, in a case similar to the instant case, found a violation by the Employer, but no remedy was ordered because the transfer of tasks was de minimis. The Arbitrator did not state the amount of time in issue, but concluded that "a cease and desist would lead to the absurd consequence as previously noted, namely, a 'merchandiser' standing by the grievant as she 'keyed' the request with the 'merchandiser's' response being 'keyed' by the grievant. The shift of tasks was referred to as creating a form of 'featherbedding'. This is not the case here.

to implement said SAP system was a prudent and wise decision from an operational standpoint.

Based on the above facts and discussion thereon, the Arbitrator renders the following

AWARD

1. That the Company violated the terms of the collective bargaining agreement when it took bargaining unit work away from PACE represented employees and assigned this work to non-unit employees.
2. That the Company shall return the duties performed by the Repair Coordinator and Local Material Master Data Coordinator that were previously performed by Storeroom to the Storeroom personnel.
3. That the Arbitrator retains jurisdiction for a period of sixty (60) days from the date below to resolve any issue(s) that may arise in the implementation of this Award.

Dated at Madison, Wisconsin, this 14th day of May, 2002.

Herman Torosian, Arbitrator